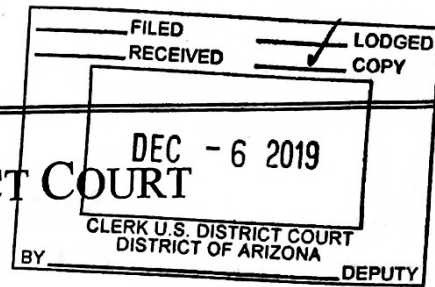


## UNITED STATES DISTRICT COURT

for the

District of Arizona

Tucson Division



CV-19-571-TUC-DCB

Case No.

(to be filled in by the Clerk's Office)

DAVID M. MORGAN

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

COCHISE COUNTY BOARD OF SUPERVISORS;  
COCHISE COUNTY AND CERTAIN  
OFFICIALS AND EMPLOYEES, IN THEIR  
PERSONAL AND OFFICIAL CAPACITIES  
(SEE ATTACHED)

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one)

☒ Yes ☐ No

## COMPLAINT FOR A CIVIL CASE

## I. The Parties to This Complaint

## A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

DAVID M. MORGAN

Street Address

10 QUALITY HILL, PO Box 1218

City and County

BISSON, COCHISE COUNTY

State and Zip Code

AZ 85603

Telephone Number

(520) 236-4051

E-mail Address

editor.SVDR@gmail.com

## B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

BRIAN MCINTYRE  
COUNTY ATTORNEY  
150 QUARTZ HILL, 2<sup>ND</sup> FLR  
BISBEE, ~~AZ~~ COCHISE COUNTY  
AZ 85603  
(520) 432-8700  
bmcintyre@cochise.az.gov

Defendant No. 2

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

SARA RANSOM  
former DEPUTY County Attorney

AZ

Defendant No. 3

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

LORI ZUCCO  
Chief Deputy County Attorney, Criminal Div.  
150 QUARTZ HILL, 2<sup>ND</sup> FLR  
BISBEE, ~~AZ 85603~~ COCHISE COUNTY  
AZ 85603  
(520) 432-8700  
lzucco@cochise.az.gov

Defendant No. 4

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

MARK DANIELS  
SHERIFF  
205 N. JUDG DR  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9500  
~~markd~~ mdaniels@cochise.az.gov

Defendant No. 45

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

KEN BRADSHAW  
COMMANDER, DETENTIONS DIVISION  
205 N. JUDD DR.  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9500  
kbradshaw@cochise.az.gov

Defendant No. 26

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

AMIEL MONGE  
SHERIFF'S LIEUTENANT, BISBEE JAIL MANAGER  
203 N. JUDD DR.  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-7540  
Amonge@cochise.az.gov

Defendant No. 37

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

TODD BORQUEZ  
DETECTIVE  
205 N. JUDD DR.  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9500  
tborquez@cochise.az.gov

Defendant No. 48

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

CAROL CAPAS  
PUBLIC INFORMATION OFFICER  
205 N. JUDD DR.  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9500  
ccapas@cochise.az.gov

Defendant No. 19

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

MARY ELLEN SUAREZ PUNLAP  
(former) CLERK of the Superior Court  
11 COCHISE LN  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-7236

Defendant No. 2/0

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

UNKNOWN  
(former or current) DEPUTY CLERK of the COURT  
100 QUALITY Hill  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-8600

Defendant No. 3/1

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

PAT CALL  
(former) COUNTY SUPERVISOR; (NOW) JUSTICE OF PEACE  
100 COLONIA DE SALUD  
SIERRA VISTA, COCHISE COUNTY  
AZ 85635  
(520) 803-3800  
~~pat~~ patcall@cox.net

Defendant No. 4/2

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

ANN ENGLISH  
COUNTY SUPERVISOR  
1415 MELODY LN, Bldg "G"  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9200  
Aenglish@cochise.az.gov



Defendant No. 1 <sup>13</sup>

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

PEGGY JUDD  
COUNTY SUPERVISOR  
1415 MELBOM LN  
BISBEE, COCHISE COUNTY  
AZ 85603  
(520) 432-9200  
pjudd@cochise.az.gov

Defendant No. 2

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

Defendant No. 3

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

Defendant No. 4

Name  
Job or Title (if known)  
Street Address  
City and County  
State and Zip Code  
Telephone Number  
E-mail Address (if known)

on it

## II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? (check all that apply)

☒ Federal question

☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

### A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

U.S. CONSTITUTION, FIRST AMENDMENT

### B. If the Basis for Jurisdiction Is Diversity of Citizenship

NOT APPLICABLE

#### 1. The Plaintiff(s)

N/A

##### a. If the plaintiff is an individual

The plaintiff, (name) \_\_\_\_\_, is a citizen of the State of (name) \_\_\_\_\_.

##### b. If the plaintiff is a corporation

The plaintiff, (name) \_\_\_\_\_, is incorporated under the laws of the State of (name) \_\_\_\_\_, and has its principal place of business in the State of (name) \_\_\_\_\_.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

#### 2. The Defendant(s)

##### a. If the defendant is an individual

The defendant, (name) \_\_\_\_\_, is a citizen of the State of (name) \_\_\_\_\_. Or is a citizen of (foreign nation) \_\_\_\_\_.

b. If the defendant is a corporation

The defendant, (name) \_\_\_\_\_, is incorporated under the laws of the State of (name) \_\_\_\_\_, and has its principal place of business in the State of (name) \_\_\_\_\_. Or is incorporated under the laws of (foreign nation) \_\_\_\_\_, and has its principal place of business in (name) \_\_\_\_\_.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

SEE ATTACHED

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

- DEFENDANT HAS NOT DISMISSED LAWSUIT, HAVE NOT CHANGED POLICIES & PRACTICES
- DAMAGES TO COMPENSATE PLAINTIFF FOR COSTS (to be determined)
- PUNITIVE DAMAGES <sup>SUFFICIENT</sup> TO DETER FUTURE VIOLATIONS

Attachment

III. State of Claim(s)

INTRODUCTION

Plaintiff David M Morgan has published the Cochise County Record intermittently and in various electronic forms since late 2005. The publishing has focused on local courts, local policing and local politics and has in excess of 11,000 regular readers.

Morgan also moderates a Facebook group focused on similarly serious local news. The group has more than 10,000 members. Combined, Morgan's publishing resources have become the best read source of such information in the rural border county.

=====

CLAIM ONE

On November 15, 2019 and on several other occasions since September 25, 2017 Morgan's attempts to schedule visits with Cochise County jail inmates via the video visitation service was "rejected" with a message from inmate communications service provider Securus that the decision was made by, and was relevant only to, the Cochise County Sheriff's jail.

On September 25, 2017 plaintiff Morgan had received a letter from CCSO Bisbee Jail Manager Lt Ariel Monge indicating that Morgan was "no longer authorized to visit neither by video or in person at any of the Cochise County Jail facilities."

On September 25, 2017 Morgan e-mailed CCSO Commander (Detention Operations) Ken Bradshaw that he wanted to appeal the suspension decision as relayed by Monge. Bradshaw never responded. Sheriff Mark Dannels was made aware of the suspension and the request to appeal it, as was Sheriff's Office Public Information Officer Carol Capas, County Attorney Brian McIntyre and County Supervisors Pat Call, Ann English and Peggy Judd. No one responded to Morgan about his request to appeal the suspension of his capability to communicate with jail inmates in person or via the Securus video visit system.

Ariel Monge, Ken Bradshaw, Mark Dannels, Carol Capas, and Brian McIntyre



took actions, under color of law, to interfere with the news gathering and news dissemination activities of Morgan.

## CLAIM TWO

On December 8, 2017 Morgan was served with notice of a civil action (Cochise County Superior Court CV2017-0060) in which Brian McIntyre and the Office of the Cochise County Attorney alleged Morgan had, in publishing a news story about a criminal defense attorney's Motion to Remand to Grand Jury with links to related documents, violated criminal and civil laws.

The Verified Complaint by McIntyre asks for an Order of the civil court declaring Morgan in violation of a criminal statute and two civil statutes and asks for an award of attorneys fees.

In mid-October 2017, Todd Borquez (a detective with the Cochise County Sheriff's Office) was contacted by one or more persons in the Cochise County Attorney's Office and began an investigation of Morgan for the criminal misdemeanor charge of Unlawful Grand Jury Disclosure.

In a March 20, 2018 hearing on plaintiff McIntyre's request for Temporary Restraining Order, Deputy County Attorney Sara Ransom argued that Morgan's acts of publishing were criminal and that the case was not about First Amendment protected activities. County Attorney McIntyre testified that he could have had Morgan arrested but that wouldn't accomplish what he wanted. McIntyre said his office had spent more than 100 hours on the (Morgan) case.

On March 20, 2018 out-of-county Judge Thomas Fink (Superior Court for Santa Cruz County, Arizona) ruled from the bench denying the Preliminary Injunction, finding that that Morgan broke no laws in obtaining the documents in question, and that the county was not likely to succeed on the merits of the underlying civil action.

The Office of the County Attorney appealed the court's denial of the Application for Preliminary Injunction.

On June 13, 2019 the Court of Appeals filed the decision AFFIRMING the trial court's ruling. On August 7, 2019 the Court of Appeals filed a mandate instructing the Superior Court for Cochise County to conduct such proceedings as necessary to comply with the decision of the court.

As of Dec 5, 2019 the underlying case of The Office of the Cochise County

P.3

Attorney v David Morgan remains open. Prosecution has not proceeded nor has the case been dismissed.

Brian McIntyre, Lori Zucco, Sara Ransom and Todd Borquez took actions, under color of law, to interfere with the news gathering and news dissemination activities of Morgan.

### CLAIM THREE

In Dec 2017, and January/February 2018, Mary Ellen Dunlap, at the time Clerk of the Superior Court but without lawful authority, directed Deputy Clerks of Court (names unknown at this time) to restrict Morgan's access to review certain case files and case file documents which had not been sealed by court order or statute.

Dunlap failed and refused to obtain or create accurate, specific, written procedural information and/or provide other training to Clerk's office staff with regard to public access to court files and documents, lawful and proper redactions, and differences between "sealed" files and documents and those that are "restricted".

Mary Ellen Dunlap and unknown Deputy Clerks took actions, under color of law, to interfere with the news gathering and news dissemination activities of Morgan.

### CLAIM FOUR

At all times relevant to the allegations in this Complaint the 3-person elected County Supervisors (Pat Call, Ann English, and Peggy Judd) were made aware, directly and/or via County Manager Ed Gilligan, of Morgan's regular complaints about access to public records including court records, access to communications with jail inmates, and the County's legal action against David Morgan which sought to limit Morgan's current and future news publishing activities.

The Supervisors failed and refused to provide adequate supervision of the elected heads of the Sheriff's Office, the Office of the County Attorney and the Clerk of the Superior Court to ensure that those persons who control access to information about operations of county government took reasonable precautions (including clear written training and supervision) to avoid violations of Morgan's First Amendment rights.

**V. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

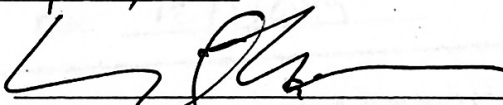
**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

12/6/2015

Signature of Plaintiff



Printed Name of Plaintiff

DAVID M. MORGAN

**B. For Attorneys**

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address